

**PROCEEDINGS BEFORE
THE WASHINGTON STATE
BOARD OF ACCOUNTANCY**

In the Matter of the Certified Public
Accountant (CPA) Certificate and/or
Licenses to Practice Public Accounting of:

E. Kent Oswalt, CPA,

Respondent.

No. ACB-1330

Stipulation and Agreed Order

The Washington State Board of Accountancy (Board) and E. Kent Oswalt
(Respondent) stipulate and agree as follows:

Section 1: Procedural Stipulations

- 1.1 Respondent understands that the State may issue a statement of charges in this matter and proceed to a hearing before the Board upon the merits of said charges although the State has not done so, in order to facilitate resolution of this matter in accordance with the legislative intent endorsed in RCW 34.05.060.
- 1.2 Respondent understands that should the State prevail at hearing based on a statement of charges that the Board has the power and authority to deny, suspend, revoke, or refuse to renew the Respondent's certified public accountant certificate or any individual or firm license to practice public accounting as a certified public accountant in Washington and may impose a fine plus the Board's investigative and legal costs in bringing charges, impose full restitution to injured parties, or impose conditions precedent to renewal of the certificate or license.
- 1.3 Respondent understands that the Respondent has the right to defend against a statement of charges by requesting a hearing and presenting evidence on the

Respondent's behalf and the Respondent voluntarily waives the right to a hearing and all other rights which may be accorded the Respondent by the Administrative Procedures Act, chapter 34.05 RCW, and the laws of Washington, including the right to petition the courts for judicial review.

- 1.4 Respondent wishes to expedite the resolution of this matter by means of this Stipulation and Agreed Order and does not desire to proceed to a formal hearing based on the issuance of a statement of charges.
- 1.5 The Respondent understands that the Stipulation and Agreed Order is not binding unless approved by the Board.
- 1.6 Should this Stipulation and Agreed Order be rejected by the Board and the State proceeds to issue a statement of charges, the Respondent waives any objection to the participation of any members of the Board at a hearing on this matter, other than the consulting board member in this proceeding.
- 1.7 The parties further stipulate to the following Stipulated Facts, Conclusions of Law and Agreed Order:

Section 2: Stipulated Facts

- 2.1 At all times material hereto, E. Kent Oswalt, the Respondent herein, held a Certified Public Accountant (CPA) certificate and license (No. 05160) to practice public accounting in the state of Washington. The Respondent was the sole owner of the CPA firm, E. Kent Oswalt, CPA (a sole proprietorship). The CPA firm, E. Kent Oswalt, CPA held a valid license (No. 3513) to practice public accounting in the state of Washington through January 3, 2011. The Respondent is a member of the CPA firm Oswalt-JISA CPA's PLLC (a limited liability company). The CPA firm Oswalt-Jisa CPA's PLLC currently holds a valid license (No. 5534) to practice public accounting in the state of Washington.

2.2 On January 22, 2011, the Respondent entered into a Stipulation and Agreed Order with the Board (ACB-1269). The Board ordered the Respondent to pay a fine, reimburse the Board's investigative and legal costs, and complete specific continuing professional education. The Board concluded the Respondent violated WAC 4-25-610, WAC 4-25-620 (recodified as WAC 4-30-040), and WAC 4-25-631 (recodified as WAC 4-30-048) based on the following Findings of Fact:

2.2.1 During 2007, the marital communities of Manuel and Hilda Chavallo and Jose and Tammy Chavallo formed Chavallo Construction, Inc. an "S" corporation and Columbia Park Trail, LLC. The Respondent or the Respondent's CPA firm prepared the 2007 corporate income tax returns for Chavallo Construction, Inc. and Columbia Park Trail, LLC. In 2008, the marital community of Manuel and Hilda Chavallo loaned approximately \$83,000 to Chavallo Construction, Inc. and the marital community of Jose and Tammy Chavallo loaned approximately \$20,000 to Chavallo Construction, Inc. In 2008, construction work in progress for a building held by Chavallo Construction, Inc. was distributed to the shareholders subject to debt. To avoid taxable income on the distribution, the Respondent reduced the debt owed to each marital community by \$23,110. This cost of construction work in progress was contributed subject to the remaining debt to Columbia Park Trails, LLC in the same year. At the end of 2008, the shareholders incorporated all significant assets and liabilities from Chavallo Construction, Inc. into Columbia Park Trails, LLC. The Respondent or the Respondent's CPA firm prepared the 2008 corporate income tax returns for Chavallo Construction, Inc. and Columbia Park Trail, LLC. Manuel Chavallo objected to the tax treatment of the distribution and the resulting reduction in the balance of the amount of debt owed to him after the

contribution to Columbia Park Trails, LLC.

2.2.2 In the course of preparing the 2008 tax returns, the Respondent accepted the direction of Jose and Tammy Chavallo (50% owners) for tax treatment of transfer of assets and reduction of debt over the objection of the other 50% owners (Manuel and Hilda Chavallo).

2.2.3 The Respondent's action at the direction of Jose and Tammy Chavallo was considered by Manuel and Hilda Chavallo to be directly adverse to their interest.

2.2.4 The Respondent failed to obtain a waiver of conflict of interest as required by IRS Circular 230. Each affected owner did not waive the conflict of interest and did not give informed consent to the tax treatment.

2.2.5 The Respondent's tax treatment of the transaction in the following year was to the satisfaction of the affected 50% owner in the 2009 tax return preparation.

The affected owner withdrew the complaint but the conflict remains.

2.3 On or about January 1, 2008, the Respondent drafted a promissory note between Columbia Park Trail, LLC and/or Chavallo Construction, Inc. (the "Borrower") and Manuel and Hilda P. Chavallo, (the "Payee"). Drafting of legal documents or agreements which affect the legal rights of an entity or person is defined as the practice of law in Washington State. The Respondent is not authorized to practice law in Washington State.

2.4 After the Board's entry of ACB-1269, the Respondent continued to make accounting decisions for Columbia Park Trail, LLC without authorization from all owners, failed to obtain a waiver of conflict of interest from each affected owner as required by IRS Circular 230, failed to make the necessary journal entries to correct the note receivable entry on Columbia Park Trail, LLC's books for Manuel and Hilda Chavallo's loan and failed to correct the 2008 tax return.

- 2.5 On or about October 19, 2011, the Respondent sent an email to Fred and Manuel Chavallo terminating his professional relationship with Columbia Park Trail, LLC and offered to provide the necessary information to Columbia Park Trail's new accounting firm.

Based on the foregoing Stipulated Facts, the Board makes the following:

Section 3: Conclusions of Law

- 3.1 The Washington State Board of Accountancy has jurisdiction over the Respondent and the subject matter herein.
- 3.2 The Respondent's acts and omissions described in Stipulated Facts 2.2 through 2.4 constitute cause for Board discipline under RCW 18.04.295(4), RCW 18.04.305 and WAC 4-30-142 (formally WAC 4-25-910) for violations of WAC 4-25-610 that requires CPAs and CPA firms to use due care to comply with federal and state laws and the profession's technical and ethical standards, and discharge professional responsibility to the best of the person's ability; WAC 4-30-040 (previously codified as WAC 4-25-620) that requires CPAs and CPA firms to remain free of conflicts of interest; and WAC 4-30-048 (previously codified as WAC 4-25-631) that requires CPAs and CPA firms to comply with rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken.

Section 4: Agreed Order

Based on the Stipulated Facts and Conclusions of Law, Respondent agrees to entry of the following Order:

- 4.1 Respondent E. Kent Oswalt's CPA certificate and individual and firm licenses to practice public accounting are hereby SUSPENDED for five years from the date this Stipulation and Agreed Order is accepted and entered by the Board.


- 4.2 The suspension will be stayed provided the Respondent commits no further violations of the Public Accountancy Act or Board rules and complies with the terms of this Stipulation and Agreed Order.
- 4.3 If the Respondent violates or fails to comply with terms of this Stipulation and Agreed Order at any time during the period the suspension is stayed, the Board may vacate the stay and impose the original suspension for all or any part of the remaining suspension period. The Board may rely upon its own records to impose actual suspension for violation of this order. Prior to imposing actual suspension, the Board will serve the Respondent a notice of the suspension, its proposed effective date, and the action, if any, required of the Respondent to cure the condition(s) which led to vacating of the stay.
- 4.4 Respondent agrees to:
- 4.4.1 Pay a one thousand five hundred dollar (\$1,500) fine. This fine shall be payable to the Washington State Board of Accountancy and remitted to the Washington State Board of Accountancy at PO Box 41465, Olympia, WA 98504-1465 in such manner that the Board receives it within 60 days of the Board's acceptance and entry of this Stipulation and Agreed Order.
- 4.4.2 Reimburse the Board five hundred dollars (\$500) for investigative and legal costs. This payment shall be payable to the Washington State Board of Accountancy and remitted to the Washington State Board of Accountancy at PO Box 41465, Olympia, WA 98504-1465 in such manner that the Board receives it within 60 days of the Board's acceptance and entry of this Stipulation and Agreed Order.
- 4.5 The Board will publish the terms of this Stipulation and Agreed Order.
- 4.6 Any and all costs involved in complying with this Order shall be borne by the Respondent.
- 4.7 Any violation of the terms and conditions of this Agreed Order, Chapter 18.04

RCW, and/or Title 4 WAC following the date of acceptance by the Board and notification of such acceptance to the Respondent shall be grounds for denying, suspending, revoking, or refusing to renew the Respondent's certificate and/or license(s) as provided by chapter 18.04 RCW. The terms of this Stipulation and Agreed Order apply to and resolve only the violations referred to herein.

- 4.8 Nothing in this Order precludes the Board from exercising its authority and responsibilities under chapter 18.04 RCW or Title 4 WAC. Any violations of such chapters not herein addressed or of this Order constitute independent grounds as provided for by law for Board action against the Respondent.

I, **E. KENT OSWALT**, certified that I have read this Stipulation and Agreed Order in its entirety; that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. If the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

DATED this 9 day of February 2012.

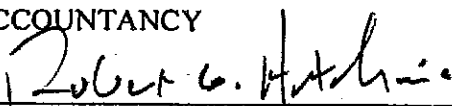


E. Kent Oswald, CPA
Respondent

Section 5: Order

The Board accepts and enters this Stipulation and Agreed Order.

DATED this 15th day of February 2012.

WASHINGTON STATE BOARD OF
ACCOUNTANCY


Robert G. Hutchins
Vice Chair